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Supreme Court, U.S.
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No. 02-323

IN THE

Supreme Court of the United States

NDCHEALTH CORPORATION and SUBSIDIARIES,

Petitioners,

v.

UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's Rule 29.6 Statement was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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REPLY BRIEF FOR THE PETITIONERS

The government's brief in opposition to the petition mischaracterizes both the nature of the holding by the lower courts as well as the practical import of this decision. First, while the government does acknowledge the direct conflict between the decisions of the Federal and Ninth Circuits, it does not accurately describe the analysis of the Federal Circuit in this case. In describing the decisions of the Federal Circuit and Court of Federal Claims, the government attempts to craft a purely statutory basis for the holdings below. However, this characterization is in direct conflict with the Court of Federal Claims' opinion which expressly refers to the legislative history as the basis for its overarching theme that section 204(a)(7) of the Act[1] is intended to be of "narrow application" and that "it had, at most, two intended beneficiaries . . . ." Pet. App. 20a. Second, this mischaracterization of the analysis allows the government to avoid addressing the true significance of the error committed. In addition to the practical importance of the proper role of legislative history in the interpretation of federal statutes in general, the decision below also has a particular impact on the interpretation of transitional rules in federal tax legislation.

A. The Lower Courts Erroneously Relied on Legislative History To Add a Requirement Not Contained in the Statute.

1. The fact that Petitioner entered into an "agreement to lease," as this term is used in section 204(a)(7)(B) of the Act, on April 21, 1973 (i.e., before September 26, 1985) was

1. All references to the "Act" are to the Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085.

established in the proceedings below. JA 103, 122, 186-187. The government does not contest this fact in its brief in opposition. In summarizing the requirements of section 204(a)(7), the government states: "To qualify for this exception, the taxpayer must, prior to September 26, 1985, have made an 'agreement to lease' a building or buildings as the original lessee, and the buildings must be intended 'to be used' or 'to serve' as the 'world headquarters' of the lessee and its affiliates." Br. in Opp. 5. The fact that Petitioner was the "original lessee" and that the building was "to serve" as the "world headquarters" for Petitioner is not in dispute. *See* Pet. 5; JA 61. Thus, the government's summary of the requirements of section 204(a)(7) makes clear that Petitioner qualified for the world headquarters exception according to the plain language of the statute, and that the lower courts created an additional requirement, not contained in the statute, that a taxpayer must not have entered into a lease and taken possession of the building prior to the statutory date of September 26, 1985. As acknowledged by the government, Br. in Opp. 8, this decision is in direct conflict with the Ninth Circuit's opinion in *Airborne Freight Corp. v. United States*, 153 F.3d 967, 970 (9th Cir. 1998) (declining to "write the government's additional proposed restrictions into the statute in order to confine the exception virtually to a class of one.").

2. The government dedicates most of its argument to discussing the merits of the determination below that the term "agreement to lease" is legally distinguishable from a "lease agreement," and simply ignores that both parties agreed that Petitioner entered into both a "lease agreement" *and* an "agreement to lease" prior to September 26, 1985.[2] Br. in Opp.

2. The government awkwardly states that "Petitioner executed a 'Lease Agreement' with respect to its world headquarters prior to September 26, 1985, but prior to that date it also executed a lease for the building and

(Cont'd)

5-7. The government then dismisses the real issue in the petition, the inappropriate use of legislative history in statutory interpretation, in a scant two paragraphs. Br. in Opp. 7-8.

Here the government simply concludes, without any specific reference to the opinions below, that the decision was based primarily on the language of the statute, and legislative history was used solely to confirm the understanding of the statutory text. Br. in Opp. 7-8. The government's brief states:

> As the courts below concluded, the use of the term "agreement to lease" coupled with the prospective language "is to be used" and "are to serve" demonstrates that Congress intended to provide a narrow exception that is available only to those taxpayers who, prior to September 26, 1985, entered into an agreement to lease premises that were to serve as their world headquarters, but who had not entered into an actual lease of the premises until after that date.

Br. in Opp. 7.

This characterization of the lower courts' analysis is patently at odds with the written opinions. The Court of Federal Claims' opinion states:

> While the legislative history does not specifically define the phrase in question [referring to "agreement

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began occupying it." Br. in Opp. 7. It appears that the government realized that if it used the term "agreement to lease" in the above sentence instead of using "Lease Agreement," which is the title of the document, it would be obvious that Petitioner satisfied the plain language of section 204(a)(7)(B) of the Act, and therefore qualified for transitional relief.

> to lease"], it does strongly suggest that Congress intended the transitional rules to have a *narrow* application. . . . section 204(a)(7) proves no exception to this observation, as various aspects of its legislative history indicate that it had, at most, two intended beneficiaries – the firms Merrill Lynch and Drexel Burnham Lambert.

Pet. App. 20a (emphasis added). The government adopts this rationale of "narrow application" in its brief in opposition – in the seven-and-a-half pages of substantive argument the government refers to the "narrow" nature of the provision seven times. Br. in Opp. 2, 3, 4, 5, 7 (twice), 9. Yet, neither the courts below nor the government's brief has pointed to a single place in the statute or the legislative history that uses this oft-quoted word.

This ultra-narrow application of the world headquarters transitional rule has no basis whatsoever in the statutory language, and clearly is not found in the "is to be used" and "are to serve" language of sections 204(a)(7)(A) and (C) of the Act as the government argues here. Br. in Opp. 7. Both of these sections use prospective language to refer to the time when the qualified property placed in service during the transition period from 1986 to 1991 "is to be used."[3]

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3. This is plain from the language of section 204(a)(7), which provides that the repeal of the investment tax credit "shall not apply to [certain property] placed in service by a lessee or its affiliates if – (A) the lessee or an affiliate is the original lessee of each building in which *such property is to be used* . . . and (C) *such buildings are to serve* as world headquarters of the lessee and its affiliates." Pet. App. 30a (emphasis added). This context clearly indicates that

(Cont'd)

These provisions have no bearing on whether Petitioner satisfies section 204(a)(7)(B) of the Act by entering into an "agreement to lease" before September 26, 1985, and there is no dispute that Petitioner satisfied the requirements of sections 204(a)(7)(A) and (C). JA 61.

The government can point to no portion of either lower court opinion where the court provides a statutory basis for why Petitioner does not meet the requirement of section 204(a)(7)(B) in light of the undisputed fact that it entered into an "agreement to lease" before September 26, 1985. After its in-depth analysis of the difference between the words "agreement to lease" and "lease agreement," the Court of Federal Claims turned to the legislative history to bolster is often repeated yet unsupported mantra of "narrow application." *See* Pet. App. 20a. Instead of explicitly addressing the fact that Petitioner had an "agreement to lease entered into before September 26, 1985," the court relied on this legislative history, which named two specific taxpayers as intended beneficiaries, to summarily conclude that Petitioner did not qualify. Pet. App. 20a-29a. The court pointed to no language in the statute that prohibits a taxpayer obligated under an agreement to lease entered into before September 26, 1985, from executing a lease and taking possession prior to that date, nor did it find any piece of legislative history indicating such a requirement was intended.

(Cont'd)
the requirements of subsections (A) and (C) must be satisfied at the time the property is placed in service, not at the time the taxpayer enters into an "agreement to lease."

B. The Issue Warrants Review Because the Federal Circuit's Decision Establishes Dangerous Precedent Regarding the Use of Legislative History in Statutory Interpretation.

The issue presented is important because it will clarify and protect the precedent of this Court regarding the appropriate role of legislative history in the interpretation of federal statutes. Contrary to the government's argument, the question presented in the petition is not merely an issue of the proper interpretation of section 204(a)(7) of the Act, but rather a question of whether legislative history should be used by the courts to implement a perceived congressional policy in spite of the plain language of the statute. Because the government misdescribes the opinions of the lower courts as being grounded completely in the language of the statute at issue, it is easy for the government to assert that "it is manifestly unlikely that any additional cases involving this narrow statutory question will hereafter arise in the future." Br. in Opp. 9. However, as Petitioner makes clear in its petition and in the discussion above, the lower courts did not simply rely on the statute in holding that Petitioner was not entitled to transitional relief under Section 204(a)(7), but instead used the legislative history to deny Petitioner's qualification under the plain language of the statute.

The Federal Circuit's disregard for Petitioner's qualification under the plain language of section 204(a)(7)(B) in favor of a perceived policy of ultra-narrow application is contrary to the unambiguous precedent of this Court regarding the interpretation of clear statutory language, and establishes dangerous precedent for the use of legislative history by courts in the future. This mode of statutory analysis patently conflicts with the well-established law of this Court

that requires statutory analysis to begin "with the language of the statute itself," *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)), and that "the sole function of the courts is to enforce [the statute] according to its terms." *Id.* (citing *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

In addition to the practical importance of the proper role of legislative history in the interpretation of federal law generally, this issue also has a particular impact on the interpretation of transitional rules in federal tax legislation. Virtually every piece of federal tax legislation of any significance will contain numerous transitional rules.[4] These rules are tailored to various degrees to address the

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4. *See, e.g.*, Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 205(c)(1)(B)-(E), 206(e)(2), 208(a)(1) (adding 26 U.S.C. § 168(i)(7) (1984)), 208(d)(2)-(3), 96 Stat. 324; Tax Reform Act of 1984, Pub. L. No. 98-369, §§ 12(c), 59(c)(2), 91(i), 111(c), 123(c)(2), 138(b)(2)-(3), 211 (codified at 26 U.S.C. § 809(i) (1984)), 98 Stat. 494; Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, §§ 4214(c), 9311(a)(2), 10631(c)(3), 101 Stat. 1330; Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, §§ 1012(n)(3), 5061(d)(2), 6004, 6130(d)(3), 102 Stat. 3342; Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, §§ 11302(a) (adding 26 U.S.C. § 807(e)(7)(B) (1990)), 11321(c)(3), 104 Stat. 1388; Small Business Job Protection Act of 1996, Pub. L. No. 104-188, §§ 1115(b)(2), 1449(d), 1616(a) (adding 26 U.S.C. § 593(g)(5) (1996)), 1904(e), 110 Stat. 1755; Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, §§ 101(g)(2)(C), 102(c)(2)(C), 401(c)(2)(C), 110 Stat. 1936; Taxpayer Relief Act of 1997, Pub. L. No. 105-34, §§ 1015(c)(2), 1303, 111 Stat. 788; Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170, § 546(b), 113 Stat. 1860.

situations of particular groups of taxpayers who will be adversely impacted by changes in the tax law. There are in fact situations where Congress has decided to provide a benefit to a single taxpayer, and in these situations it has simply named the intended beneficiary. *See* Pet. 14-15, n.11. The Federal Circuit's opinion in this case establishes a dangerous precedent for restricting the scope of an otherwise generally-applicable transitional rule to only "two intended beneficiaries" in spite of the plain language of the statute because they are referred to by name in the legislative history. *See* Pet. App. 20a. The Federal Circuit should have ruled consistently with the Ninth Circuit in *Airborne* and held that clear and unambiguous statutory language must be applied according to its terms notwithstanding a perceived congressional policy of "narrow application."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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